

FILED
DISTRICT COURT OF GUAM

APR 22 2008 RD.

1 THE LAW OFFICE OF
2 STEPHANIE G. FLORES
Suite 202, Quan Bldg.
2 324 West Soledad St.
Hagatna, Guam 96910
3 Telephone: 671-479-1003
Facsimile: 671-479-1002
4 Email: sgflores@gmail.com

JEANNE G. QUINATA
Clerk of Court

5 Attorney for Defendant Punzalan

6 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF GUAM

7
8 **CRIMINAL CASE NO. 07-00075**

9 **UNITED STATES OF AMERICA,**

10 Plaintiff,

11 vs.

MOTION FOR DISCOVERY

12 **NATHANIEL DIAZ PUNZALAN,**

13 Defendant.

14

15

16

MOTION FOR DISCOVERY

17 COMES NOW Defendant Nathaniel D. Punzalan, by and through undersigned counsel,
18 and respectfully requests an order requiring the United States Attorney to provide the
19 discovery listed below by a date certain established by this Court. This motion is brought
20 pursuant to Rule 16 of the Federal Rules of Criminal Procedure, the Due Process Clause of
21 the United States Constitution, and the accompanying memorandum of points and
22 authorities.

23

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION

ORIGINAL

1 Under Rule 12(b) of the Federal Rules of Criminal Procedure, a party
2 must file a motion for discovery, otherwise the failure to file such a motion would constitute
3 a waiver under Rule 12(f).

4 The rules of criminal procedure, along with the due process clause of the United States
5 Constitution, requires that a prosecutor must make an effort to obtain discoverable
6 information for the defense that is in the possession, custody, or control of other
7 governmental agencies acting on the prosecutor's behalf. A prosecutor must exercise due
8 diligence to determine the existence of such material and has an additional obligation to
9 learn of favorable information in the possession of others. Kyles v. Whitley, 115 S.Ct. 1769
10 (1995).

11 Defendant requests production or disclosure of the following items
12 for purposes of discovery:

13 1. The Defendant's Statements.

14 Under F.R.Cr.P.16(a)(1)(A), the defendant is entitled to disclosure of all copies
15 of any written or recorded statements made by the defendant; the substance of any
16 statements made by the defendant which the government intends to offer in evidence at
17 trial; any response by the defendant to interrogation; the substance of any oral statements
18 contained in the handwritten notes of the government agents; any response to any Miranda
19 warnings which may have been given to the defendant (See U.S. v. McElroy, 697 F. 2d
20 459(2nd Cir. 1982)); and any other statements by the defendant that are discoverable under
21 F.R.Cr.P.16(a)(1)(A).

22 The Government must reveal all the defendant's statements, whether oral or
23 written regardless of whether the Government intends to introduce those statements.

24

1 2. Arrest, Reports, Notes, and Dispatch Tapes.

2 The defendant also specifically requests that all arrest reports, notes and
3 dispatch or any other tapes that relate to the circumstances surrounding his arrest or any
4 questioning, if such reports have not already been produced in their entirety, be turned over
5 to him. This request includes, but is not limited to, any rough notes, record, reports,
6 transcripts or other documents in which statements of the defendant or any other
7 discoverable material is contained. This is all discoverable under Brady v. Maryland, 373
8 U.S. 83 (1963). See also U.S. v. Johnson, 525 F. 2d 999 (2d Cir. 1975); U.S. v. Lewis, 511 F. 2d
9 798 (D.C. Cir. 1975); U.S. v. Pilnick, 267 F. Supp. 791 (S.D.N.Y. 1967); Loux v. U.S., 389 F. 2d
10 10911 (9th Cir. 1968). Arrest reports, investigator's notes, memos from arresting officers,
11 dispatch tapes, sworn statements, and prosecution reports pertaining to the defendant are
12 available under F.R.Cr.P.16(a)(1)(B) and (C), F.R.Cr.P.26.2 and 12(I)

13 3. Reports of Scientific Tests or Examinations.

14
15 Pursuant to F.R.Cr.P.16(a)(1)(D), Defendant requests the reports of all tests
16 and examinations conducted upon the evidence in this case, including but not limited to any
17 fingerprint analysis, that is within the possession, custody, or control of the government, the
18
19 existence of which is known, or by the exercise of due diligence may become known, to the
20 attorney for the government, and which are material to the preparation of the defense or
21 which are intended for use by the government as evidence in chief at trial.
22

23 4. Brady Material.

1 The defendant requests all documents, statements, agents' reports, and
2 tangible evidence favorable to the defendant on the issue of guilt and/or which affects the
3 credibility of the government's case. Impeachment as well as exculpatory evidence falls
4 within Brady's definition of evidence favorable to the accused. U.S. v. Bagley, 473 U.S. 667
5 (1985); U.S. v. Agurs, 427 U.S. 97 (1976). This request specifically includes any information
6 about out-of-court identifications of defendant by percipient witnesses to this offense that
7 may cast doubt on their reliability.

8 5. Evidence Seized.

9 Evidence seized as a result of any search, either warrantless or with warrant is
10 discoverable under F.R.Cr.P.16(a)(1)(C).

11 6. Request for Preservation of Evidence.

12 The defendant specifically requests that all dispatch tapes, or any other
13 physical evidence that may be destroyed, lost, or otherwise put out of the possession,
14 custody, or care of the government and which relate to the arrest or the events leading to the
15 arrest in this case be preserved. This request includes, but is not limited to, any samples
16 used to run any scientific tests and any evidence seized from any third party. It is
17 requested that the government question all the agencies and individuals involved in the
18 prosecution and investigation of this case to determine if such evidence exists, and if it does
19 exist, to inform those parties to preserve any such evidence.

20
21
22
23
24

1 7. Tangible Objects.

2 The defendant requests, under F.R.Cr.P.16(a)(2)(C), the opportunity to inspect
3 and copy as well as test, if necessary, all physical evidence, other documents and tangible
4 objects, including photographs of buildings or places or copies of portions thereof which are
5 material to the defense or intended for use in the government's case in chief, or were
6 obtained from or belong to the defendant.

7

8 8. Evidence of Bias or Motive to Lie.

9 The defendant requests any evidence that any prospective government
10 witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his
11 or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); U.S. v. Strifler, 851 F.2d 1197
12 (9th Cir. 1988).

13

14 9. Impeachment Evidence.

15 The defendant requests any evidence that any prospective government
16 witness has engaged in any criminal act, whether or not resulting in a conviction, and
17 whether any witness has made a statement favorable to the defendant. Such evidence is
18 discoverable under Brady v. Maryland, see also U.S. v. Strifler, 851 F.2d 1197 (9th Cir.
19 1988)(witness prior record); Thomas v. U.S., 343 F.2d 49 (9th Cir. 1965)(evidence that detracts
20 from a witness' credibility).

21

22 10. Evidence of Criminal Investigation of any Government Witness.

23

24

1 The defendant requests any evidence that any prospective witness is under
2 investigation by federal, state, or local authorities for any criminal conduct. U.S. v. Chitty,
3 760 F.2d 425 (2nd Cir. 1985).

4
5 11. Evidence Affecting Perception, Recollection, Ability to Communicate,
6 or Truth Telling.

7 The defense requests that any evidence, including any medical or psychiatric
8 report or evaluation, tending to show that any prospective witness' ability to perceive,
9 remember, communicate, or tell the truth is impaired; and any evidence that a witness had
10 ever used narcotics or other controlled substance, or has ever been an alcoholic. U.S. v.
11 Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir.
12 1980).

13 12. Name of Witness(es) Favorable to the Defendant.

14 The defendant requests the name of any witness who made an arguably
15 favorable statement concerning the defendant. Jackson v. Weinwright, 390 F.2d 288 (5th Cir.
16 1968); Chavis v. North Carolina, 637 F.2d 213, 233 (4th Cir. 1980); Jones v. Jago, 575 F.2d
17 1164, 1168 (6th Cir. 1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979).

18 13. Statements Relevant to the Defense.

19 The defendant requests disclosure of any statement that may be relevant to
20 any possible defense or contention that he might assert. U.S. v. Bailleaux, 685 F.2d 1105 (9th
21 Cir. 1982). This includes in particular, any statements made by percipient witnesses about
22 identifications of the perpetrators of this offense in general and about the Defendant in
23 particular.

24

1 14. Jencks Act Material.

2 The defense requests all material to which defendant is entitled pursuant to
3 the Jencks Act, 18 U.S.C. §3500. Defendant specifically requests pretrial production of
4 these statements so that the court may avoid unnecessary recesses and delays for defense
5 counsel to properly use any Jencks statements and prepare for cross-examination.

6 15. Giglio Information.

7 Pursuant to Giglio v. U.S., 405 U.S. 150 (1972), the defendant requests that all
8 statements and/or promises, express or implied, made to any government witnesses, in
9 exchange for their testimony in this case, and all other information which could arguably
10 use for the impeachment of any government witnesses.

11

12 **III. CONCLUSION**

13 Based upon the foregoing points and authorities, Defendant requests that the
14
15 Court grant the motion for discovery and issue an order requiring production of
16 discoverable materials within the possession of the Government, not already disclosed to
17 the Defendant.

18 Respectfully submitted this 27th day of April, 2008/

19
20 By: _____
21
22 Stephanie G. Flores, Esq.
23 Attorney for Nathaniel D. Punzalan